



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations
of International Humanitarian Law
Committed in the Territory of the
former Yugoslavia since 1991

Case No.: IT-00-39-A

Date: 23 July 2009

Original: English

IN TRIAL CHAMBER II

Before: Judge O-Gon Kwon, Presiding
Judge Kevin Parker
Judge Melville Baird

Registrar: Mr. John Hocking

Decision of: 23 July 2009

PROSECUTOR
v.
MOMČILO KRAJIŠNIK

PUBLIC

**DECISION ON PROSECUTION MOTION TO DETERMINE
CONFIDENTIALITY**

Office of the Prosecutor

Mr. Mark Harmon

Mr. Alan Tieger

Momčilo Krajišnik, *pro se*

THIS TRIAL CHAMBER of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Tribunal”);

BEING SEISED OF “Motion to Assign a Trial Chamber to Determine the Confidentiality of Milan Babić’s Testimony of 3 June 2004”, filed confidentially on 9 June 2009 (“Motion”);

NOTING that in the Motion the Prosecution requests that the President assign a Trial Chamber to determine whether the confidentiality of the testimony of Milan Babić of 3 June 2004 at T. 3375–3415 should be lifted and the testimony made public;¹

NOTING the “Order Assigning Motion to Trial Chamber”, issued confidentially on 11 June 2009, in which the President assigned the Motion to Trial Chamber II;

NOTING the “Order Regarding Composition of a Trial Chamber”, in which Judge Parker, as Presiding Judge of Trial Chamber II, ordered that Trial Chamber II, for the purposes of disposing of the Motion, shall be composed of Judge Kwon (Presiding), Judge Parker and Judge Baird;

NOTING that on 10 March 2005 the Trial Chamber issued an oral decision, in which it ordered that the evidence given by Babić, which had been given in closed session on 2, 3, 4 and 7 June 2004, be made public, but in citing the transcript pages the Trial Chamber did not include Babić’s testimony of 3 June 2004;²

NOTING that the Prosecution submits that the reasoning and wording of the oral decision suggest that it should encompass the whole of Babić’s testimony;³ and that it is unaware of any distinction between the testimony of 3 June 2004 and the remainder of Babić’s testimony that would result in the exclusion of this testimony from the scope of the oral decision;⁴

NOTING that the Accused has not filed a Response;

NOTING that in rendering the oral decision of the Trial Chamber Judge Orić said that “[h]aving considered the facts that no further submissions on the topic were made, the Chamber orders that the evidence given by Babić shall be made public”;⁵

¹ Motion, para. 4.

² *Ibid.*, para. 2, Appendix A; T. 10274-10277 (10 March 2005) (confidential).

³ *Ibid.*, para. 2.

CONSIDERING that there is no distinguishing feature of the testimony that Babić gave on 3 June 2004 that would justify the continuation of its confidential status;

CONSIDERING that Judge Orić has been consulted and that he does not oppose lifting the confidentiality of Babić's testimony of 3 June 2004;

PURSUANT TO Rule 79 of the Rules of Procedure and Evidence,

HEREBY GRANTS the Motion and **ORDERS** that the confidentiality of Babić's testimony of 3 June 2004 at T. 3375–3415 be lifted and that this part of his testimony be made public.

Done in English and French, the English text being authoritative.



O-Gon Kwon
Presiding

Dated this 23rd day of July 2009
At The Hague
The Netherlands

[Seal of the Tribunal]

⁴ *Ibid.*, para. 3.

⁵ T. 10276 (10 March 2005).